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REPORTS

NOTES OF THE WEEK

Withdrawal of Proceedings

The withdrawal or abandonment of criminal proceedings for a serious offence is a matter for careful consideration, and a clerk to justices is under a duty to inform the Director of Public Prosecutions where this course is taken before justices. Where the proceeding is in respect of an offence of little gravity and even less public importance there may be no real objection to withdrawal, and justices often acquiesce. It is doubtful, however, whether, strictly, once evidence has been given, justices have power to do anything other than hear the case and either convict or dismiss the information. As is constantly pointed out, justices need statutory authority for practically everything they do, and there is no specific power conferred on them to permit the withdrawal of an information once the case is before them.

Different considerations can be put forward to justify withdrawal of a complaint in a civil matter, where it is a question of personal interest and not of public interest, and so, although there is no statutory authority for withdrawal it is generally conceded that if both parties are agreed in wishing that the proceeding should be withdrawn that course may properly be allowed.

In a recent case before a juvenile court, in which a father had brought his son to court as being beyond his control, the father asked, after an adjournment, to be allowed to withdraw the case, and, says the newspaper report, the chairman, after consulting his colleagues, agreed. In fact, it would have been of no avail to proceed further if the father was determined to withdraw. By s. 64 of the Children and Young Persons Act, 1933, it is provided that in such case no order can be made by the juvenile court unless the parent consents to the making of it and understands its results. If, therefore, the parent declines to agree to the making of the order, the court is powerless, and may as well allow the case to go no further. Naturally, it would be open to the court to discuss the wisdom or otherwise of withdrawal before agreeing to drop the matter, and no doubt that was in the mind of the chairman when discussing the question with his colleagues.

The London Police Court Mission

Like so many annual reports that come into our hands, that of the London Police Court Mission refers to the present increase of crime, and says that in some respects the resources of the Mission are being over-strained. Its training homes for young people are constantly full, and there are waiting lists. High Beech, a home for youths on probation, was obliged to decline in one month as many boys as the home can accommodate. Moreover, many of the young people received in the Mission's establishments have proved difficult and complicated cases, sometimes rebellious. Nevertheless, good results are being achieved. A new probation hostel for young women will, it is anticipated, be open next year.

The Mission receives generous support but it still needs more subscribers, in order that it may continue and extend its work.

Much of this report is devoted to a memorandum of evidence presented to the Ingleby Committee on Children, and in consequence the notes about the various establishments, managed by the Mission, are briefer than usual. The memorandum covers a wide field and makes a number of recommendations about approved schools, homes and hostels, and staff. An interesting suggestion is that a policy of interchange of staff should be encouraged in the allied services of approved schools, probation and approved homes and hostels.

The students' hostel for probation officer trainees, at Rainer House, Chelsea, has, we know, been much appreciated. This is managed by the London Police Mission and the memorandum of evidence includes a recommendation that if a hostel for probation students from the north of England is shown to be necessary, the Mission should be given the opportunity to provide the same facilities there as at Rainer House.

Closing a Hole

At 120 J.P.N. 178 we set out a problem presented by s. 52 (2) (*b*) of the Town and Country Planning Act, 1954. At 121 J.P.N. 176, we restated the problem in an article entitled "What is a Whole," and we mentioned at p. 403 that the Association of Municipal Corporations was understood to be taking further advice, but that we remained of the opinion we had already twice expressed, that the phrase "development of the area as a whole" in the subsection, was not apt to describe the ordinary purposes for which a local authority buys land. It is true that a local authority will not normally intend to leave unused the land it buys, and in that sense will intend to develop the whole of it but, for reasons we gave, we thought that when interpreting this particular enactment the High Court would probably limit the expression to certain purposes of the Town and Country Planning Acts themselves, and one exceptional purpose in ss. 34 to 36 of the Housing Act, 1936.

If cl. 37 of the Town and Country Planning Bill passes into law in its present shape, this opinion will be put beyond doubt. Indeed, a slightly narrower effect will be produced, for the clause does not mention purchases of land for the purpose of ss. 55 to 57 of the Housing Act, 1957, which have taken the place of ss. 34 to 36 of the Act of 1936.

The Proposed Government Scheme for House-purchase

The Minister of Housing and Local Government (Mr. Henry Brooke) has just presented to Parliament the new White Paper (Cmd. 571) on the proposed Government scheme for house purchase. Early Government legislation will be introduced to give effect to these proposals. The White Paper is divided into two sections, one an "Explanatory Memorandum" and the other comprising two appendices (No. I an outline of the scheme agreed with the building societies and No. II the proposed conditions in which the chief registrar shall have power to approve building societies for purposes of trustee status). The White Paper makes it clear that the way to accelerate home ownership is by *increasing the amount of money available* for lending on mortgage. The method selected to achieve this purpose is by advancing Exchequer money to building societies for re-lending to would-be house-purchasers. The essence of the scheme agreed with the building societies is that Exchequer loans will be made available at an appropriate rate of interest to approved building societies so as to enable them to make advances of up to 95 *per cent.* for the purchase by owner-occupiers of certain types of house. The types concerned are private houses built in the United Kingdom before January 1, 1919 (*i.e.*, not less than about 40 years old), and not more than £2,500 in value.

This will mean that anyone wishing to buy one of these houses can be sure of getting a mortgage of up to 95 *per cent.*, if he wants it, provided of course that the property offers adequate security and that he can afford the payments.

It appears that building societies are already lending from their normal funds some £40–£50 million a year for the purchase of pre-1919 houses as well as £330 million a year for the purchase of newer houses. A consequence of the Exchequer loans in respect of the older houses will therefore be to enable the societies to lend substantially more than at present in respect of the newer houses. It is part of the agreement that within the limit of the enlarged resources thus available to them, the building societies participating in the scheme will do their best to make advances up to 95 *per cent*, for as many purchasers of 1918–1940 houses as want such advances.

The main benefit will be in widening the opportunity for purchase of houses built before the war. This enlargement of the societies' resources will also mean an increase in the money available for the purchase of post-war and newly built houses.

An additional step to encourage house purchase will enable local authorities to make advances up to 100 *per cent.* if they think fit. At present, unlike building societies, they are limited by law to a maximum figure of 90 *per cent.*

This scheme is specially directed to help people buying the older houses. In certain cases arrangements will be made for standard improvements (indoor sanitation, domestic hot water, a bathroom, and a ventilated food store) to carry, within financial limits, a *right* to an improvement grant. In this connexion, building societies will undertake to make additional loans over and above the ordinary mortgage advance for the purchase of a house so as to enable owners to meet their share of the cost of these standard improvements.

The main conditions precedent to the chief registrar approving a society for the purpose of this status relate to (*a*) its permanency (*b*) the total of its loans and deposits (*c*) the availability of certain liquid funds and (*d*) the availability of certain reserves not earmarked for any specific purpose.

Appendix I sets out in outline the scheme agreed between the Government and the building societies. Amongst the matters dealt with in the agreement are the age and value of houses proposed to be purchased, the period and rates of interest of Exchequer loans and provision for the review of the scheme. Besides these points provision is made for termination of the scheme upon notice, the priority of Exchequer loans in the event of bankruptcy, and the terms upon which the building societies must grant mortgages to credit-worthy borrowers for pre-1919 houses valued at £2,500 or less.

Appendix II deals with the chief registrar's powers to approve building societies for the purpose of trustee status.

The Government's plan also includes arrangements to simplify and make more effective the present system of improvement grants.

Maintenance Agreements Act

What is believed to be the first application made to the High Court under the Maintenance Agreements Act, 1957, was heard in chambers by Lord Merriman, P., who delivered judgment in open Court on October 29. The case, *Ewart* v. *Ewart*, was reported in *The Times*, October 30.

Section 1 (1) of the Act provides "This section applies to any agreement in writing made whether before or after the commencement of this Act between the parties to a marriage for the purposes of their living separately, being—(*a*) an agreement containing financial arrangements whether made during the continuance or after the dissolution or annulling of the marriage, or (*b*) a separation agreement which contains no financial arrangements in a case where no other agreement in writing between the same parties contains such arrangements." The point in this case was whether the agreement in respect of which the application was made came within the section seeing that it was

made on the reconciliation of the parties.

In the course of his judgment the President said that the agreement was not in the form of a separation agreement, but it was argued for the applicant, the husband, that its terms were consistent with its being designed to govern a separation and by necessary implication, did so. The wife had contemplated proceedings for divorce on the ground of adultery, but decided not to proceed apparently because this would have jeopardized his position. A deed was then executed making financial provision for the wife. The deed contained no express provision for a resumption of cohabitation, but, said the President, he was satisfied upon hearing the evidence that the parties had in fact, resumed cohabitation and continued to live together, until the husband returned to the woman the association with whom had caused the separation. After considering the argument put forward on behalf of the husband, Lord Merriman said that the deed was made for the purpose of resuming cohabitation and not that of the spouses living separately. He therefore held that the application failed for the want of jurisdiction.

It will be remembered that by subs. (3) and (4) of s. 1, a magistrates' court has jurisdiction, subject to certain limitations, to entertain applications under the Act, to alter an existing agreement.

The Mayor as Legislator

Our article upon commercial street noises at 122 J.P.N. 648, has prompted a correspondent to send us a considered argument against the decision which was reached by the magistrates in the case which provided the text for that article. His argument concludes by saying that if Parliament has given powers to the holder of a public office or to a local authority to prohibit the passage through the streets of certain types of vehicle, it is incumbent upon the magistrates to enforce the prohibition. This proposition cannot be disputed, but it does not help to solve the question whether Parliament has given such powers. This may involve interpretation of a badly drafted section, such as that upon which we were commenting at p. 648. The most interesting point of our correspondent's argument is where he traverses the finding of the magistrates (with which we had agreed in our article), that the power given to the mayor by the local Act could not take effect after the mayor's year of office. Our correspondent believes that there is a general principle of constitutional law, that the person in office for the time being (be it as secretary of state or minister, mayor or town clerk) can by the nature of his office take decisions which will be binding, not only on his successors in office but also on the public at large. We know no such general principle. Many ministers are corporations sole, for what this may be worth in this connexion, but the mayor is not. He and the town clerk alike are transient individuals; the question whether an act performed by one of them binds his official successor depends entirely on the nature of the act and the legal authority under which it is performed. Most decidedly, no person can "by the nature of his office" take decisions which will be binding on the public at large.

He can only do this by virtue of some express statutory authority, such as that which empowers the town clerk to determine whether a name shall be entered in the register of electors; a determination which, unless challenged in the proper manner, remains binding during currency of the register on the town clerk's successor if any, and on everybody else. Our correspondent asks what authority we have for supposing that a mayoral prohibition lapses when the mayor goes out of office, if indeed it has endured so long. This is but another way of saying that the true meaning of the authorizing enactment has to be discovered, and the burden of proof rests here upon those who would assert that the mayor has been given a legislative power in a particular borough, which is not possessed by other mayors, and indeed a power to legislate without confimation by an external authority, which cannot ordinarily be done even by the governing body of the corporation.

The Social Implications of Television

Mr. Christopher Mayhew, M.P., gave an address on the Social Implications of Television at the annual meeting of the National Council of Social Services. This was followed by a discussion which was introduced by Mr. Geoffrey Gorer, a social anthropologist who recently wrote a series of articles for the *Sunday Times* on the impact of television, Mrs. Mary Adams, O.B.E., formerly assistant to controller programmes, B.B.C. television, and Mr. F. S. Milligan, O.B.E., chairman of the national advisory committee on television group-viewing, which is associated with the National Council of Social Service. Mr. Mayhew said about three-fifths of the households of the country have television sets and the average viewer has the set on for 40 *per cent.* of the available time in the evening. After a set is obtained reading goes down by 15 *per cent.* On the impact of television on children he was sure it must increase their knowledge and widen their minds. Referring to his programme "The hurt mind," he said he had hoped it would have done something to change the attitude to mental health. One result appeared to be that there was an improvement in the recruitment of nurses and more guilds of hospital friends were formed. But even if one quarter of the adult population saw some of the programmes their permanent impact was limited. Little change was brought about in viewers' opinions. But the series increased knowledge on mental illnesses, and there was a marked increase in confidence in medical men. These results were deduced from a special inquiry of viewers. But the lasting effect of the programmes was very limited. In conclusion, he thought little was known about the impact of television on viewers. That television can influence thoughts and actions of both adults and children was shown by the effect of television advertisements. Mrs. Adams, speaking after 30 years' experience, thought television had far less influence on society than was generally considered. On the type of person who sees television she said under two *per cent.* of the viewers have any higher form of education. Mr. Milligan, referring to certain investigations which had been made, said only 25 *per cent.* of viewers were interested in serious subjects on the screen. He mentioned the growing interest in group viewing followed by discussion of the programme. This was organized at some youth clubs when a constructive use could be made of some of the programmes. The showing of documentary films had been followed by discussion. In the case of some branches of the townswomen's guilds members watch programmes in their own homes and then discuss them afterwards in one of their meetings. In order to develop such schemes both the B.B.C. and the I.T.A. were prepared to give advance information on programmes for inclusion in a weekly bulletin issued by his committee. Similar arrangements were developing in community centres, old people's clubs, Army units, townswomen's guilds.

EXTENDED AFTER-CARE FOR DISCHARGED PRISONERS

By FRANK DAWTRY

It is well over a century since a few good hearted people in various parts of the country began to show their concern for the welfare of prisoners returning to normal life, by the creation of the voluntary prisoners' aid societies. From 1823 onwards the justices, who were responsible for the prisons, had been authorized to give "such moderate sum as shall in their judgment be requisite," to any destitute prisoner not able to return home or to his family. But it was left to the voluntary societies to set an example and the meagre help the justices were allowed to offer was supplemented in many places by special efforts by the aid societies, for instance in Worcester where grants were made to employers who would engage ex-prisoners and in Wakefield where, in 1856, an industrial home was established in which ex-prisoners could work and live until they found work and a home of their own. This demonstration of the possibilities of help to discharged prisoners led to the Government giving power in 1862 to the justices to make grants of up to £2 for the assistance of any prisoner, to an approved aid society, a power which was transferred to the prison commissioners by the Prison Act of 1877. It was a power very sparingly used, for the second report of the commissioners, for 1878, showed that the amounts actually granted to the societies averaged 7*d*. per prisoner discharged, and in a few years such payments came to an end, to be replaced by small gratuities to prisoners and similar small *per capita* allowances to the aid societies. This in turn was later converted into a payment to the societies only, and has more recently been further converted into a system of grants to the societies with a central pool from which special grants may be allotted.

For many years, however, the concern of the statutory authority for the welfare of prisoners was limited to such small financial support, and it was not until the Gladstone Committee of 1894 had reported that the new rules were made, to provide for the official recognition of the voluntary societies, for prison governors and chaplains to be members of the committees of such societies, and for the commissioners to recognize that they had a responsibility for the personal, as well as the financial, welfare of the discharged prisoner:

> "The commissioners are the trustees for the government grant and the responsible authorities for carrying out the law, and though this strict duty ends when the prisoner has purged his crime and left the prison gate common humanity demands that some care be bestowed by the state on the discharged prisoner, both in order to relieve his immediate necessities and to make his re-entry into honest life possible and less difficult."

The State Intervenes

The care continued to be bestowed, however, through the voluntary societies until the development of the system of penal servitude and release on licence, and the corresponding development of the borstal training system with its release of young offenders on licence. Prisoners in the ordinary course of events gained a release which was absolute, but these two new categories were released only on a condition of good behaviour, and it was possible for them to be recalled for further periods in prison or borstal if the conditions of the licence were not fulfilled. The state in fact had a continuing responsibility for them, as they, too, had a continuing responsibility to the state . . . and it soon became obvious that such prisoners could not be left to the somewhat uncertain care of the voluntary aid societies, whose resources and methods varied up and down the country. The Borstal Association, for the care and supervision of ex-borstal boys, and the Central Association for the Aid of Discharged Convicts were created, with a counterpart in the Aylesbury Association for the care of women and girls leaving borstal and penal servitude sentences. It was a significant step signalizing the entry of the state into the actual provision of care for ex-prisoners, for while the new bodies had small voluntary funds they were almost entirely state-subsidized, while being left, in the best British model, to administration by an independent committee.

The voluntary societies continued their work for the ordinary so-called "local" discharged prisoners, but they were forced to reconsider their position when the use of training prisons began with the opening in 1924 of Wakefield Prison as a training centre for prisoners from the northern and midland counties. The aid societies were supposed to assist prisoners in their local prisons but Wakefield was the local prison for the West Riding D.P.A. Society though only a small proportion of its prisoners came from that area; and after considerable argument the duty of the aid societies was changed to that of taking responsibility for prisoners committed from their areas. The Salmon Committee on the Employment of Prisoners (1935) in part II of its report (Employment on Discharge) had recommended more drastic changes and the establishment of a central body to control the work of the aid societies, with representation from the Home Office and Prison Commission and more substantial government grants; these proposals were rejected by the aid societies who feared encroachment on their voluntary tradition. However, they very shortly re-organized themselves and created the National Association of Discharged Prisoners' Aid Societies, which became the central body for negotiation with the prison commissioners, for handling the distribution of grants, and for supervision of the work of after-care and aid on discharge at special prisons, such as Wakefield, whose catchment areas overlapped the geographical areas of many of the societies. The new central body immediately asked for, and received, the additional government grants which its constituent members had previously said they preferred to do without, and N.A.D.P.A.S. has in the last 20 years been responsible for obtaining considerably increased government support for the work of the voluntary societies. But its members have stoutly maintained their adherence to the voluntary principle in the work of assisting prisoners.

New Measures

The state for many years gave increasing help and looked on, but 10 years ago it took a large step into the actual field of after-care. The Criminal Justice Act of 1948 provided for young prisoners serving sentences of imprisonment, those leaving borstal training, and prisoners leaving corrective training or preventive detention, to be discharged under statutory supervision of a "specified society" for the purposes of after-care. It was expected in many quarters that the specified society would be the old D.P.A. Society but this was not the

case; the Home Secretary created a new Central After-Care Association, merging into this the former Central, Borstal and Aylesbury Associations, though these immediately re-asserted themselves as the Men's, Boys' and Women's sections of the Central After-Care Association. There was a central council of the Association, appointed by the Home Secretary with the chairman of the prison commissioners as its chairman; it was entirely state financed, and it worked in the field almost entirely through the statutory service of the probation system. Probation officers had in many cases been voluntary associates for the assistance of ex-penal servitude prisoners or ex-borstal inmates, but they now had placed upon them a statutory duty to "advise, assist and befriend" those discharged prisoners and others for whom they were requested to do so by the Central After-Care Association. It was a full recognition by the state of its responsibility to provide more adequate and efficient after-care, rather than mere "aid-and-discharge," for the offenders for whom the state had taken the greater responsibility during their training—the offenders who were either considered trainable, or, in the case of preventive detention, had been out of circulation for such long periods that their return to society must be difficult.

The efforts made in prison (given normal conditions) to train prisoners in work habits, new ideas and ideals, and to arouse in them the desire to be better citizens, needed to be followed up. The ex-prisoner needed a prop and stay for a time on making his drastic readjustment to civilian life and while he may resent the presence of any "authority" when he once left the prison gate, he had to be reminded that his release was a conditional one, but he had also to be shown that the authority was combined with an effort to assist him in his own attempts to regain a decent place in the world.

The system has worked reasonably well and none can say how much better it would have worked had conditions remained normal; but since the passing of the 1948 Act there has been an increase both in the number of prisoners and the length of their sentences (largely because of the use of corrective training and preventive detention) so that the load cast on the prisons has not made possible the intensive training hoped for, and there has been a heavy burden on the after-care services.

More Statutory Help

In the meantime, however, the voluntary societies have continued their work with the local prisoners, only to find that even here the long-term men provided them with problems for which they needed the help of the statutory services; and since 1952 it has been the duty of probation officers also to assist certain categories of prisoners at the request of the N.A.D.P.A.S.—these being mainly the prisoners who served long sentences and who accepted an offer of after-care on discharge, to be arranged through a probation officer. Such voluntary cases have been in two groups—those who gladly accepted the help offered and co-operated to the full, and those who, while promising to do so have proceeded on their own courses, failing to take work obtained for them, to go to lodgings arranged for them and generally causing concern to probation officers while queering the pitch for the next man or woman the officer may wish to help in the same way.

A New Inquiry

It was the problem such cases presented, combined with the obvious need for better after-care for more prisoners than the aid societies seemed able to provide, which led to the Home Secretary asking his Advisory Committee on the Treatment of Offenders to look again at the problems of after-care and supervision of discharged prisoners. While the aid societies have maintained the virtues of voluntary work, the committee concluded that there is a need and justification for extending statutory after-care in their own interest and that of society, to groups of ordinary prisoners for whom no such provision is at present made. The Committee in its report *The After-Care and Supervision of Discharged Prisoners* (H.M.S.O. 2*s*. 6*d*.) has no hesitation in recommending that such additional after-care should be provided, that it should be organized through the Central After-Care Association, and that it should be carried out by the Probation Service.

The committee looked carefully at the need and agreed that, while large numbers of prisoners could benefit from the supervision and support given by discharge on licence, and the concomitant after-care, it would be better to move slowly and to arrange for this help where it is most needed. They decided with admirable clarity, that, contrary to what might be the popular opinion, it is not the first offender who is in greatest need but the man serving a sentence of 12 months or more who is in prison for the second time, who may be on the verge of a criminal career but is not too immersed in crime, or conditioned to prison life, to be beyond recovery. The committee thought that the next most important group is that of prisoners who have served long sentences of four years or over, whatever their criminal record, for they have been out of circulation long enough to need some help in readjusting themselves to civilian life, and their sentences have probably been served in conditions which gave at least some opportunity for training, while also, it is hoped, being so long as to instil a desire never to return. When these two groups have been provided for, the next for consideration should be those in prison for the second time, but whose sentences are shorter, and then those in prison for the third time.

Probation Officers Needed

The "gearing" in this plan for extended supervision is based first, on the need, and secondly, on the capacity of the probation service to meet the need. That service is at present sadly under-staffed and overloaded, but the committee were assured that present recruiting gives some hope that in another year or two the service might be adequately staffed, and that thereafter with continued increase in its numbers it may be able to undertake the additional after-care proposed in the report. To probation officers, this is a refreshing approach, as so many recent committees of one sort and another have made recommendations which would involve more work for probation officers but have not been able to suggest how the work could be done. This committee sees the problem of man-power first, and would suggest that as that is solved, the recommendation about extended after-care should come into effect by degrees. It is a wise recommendation.

The committee suggests that the period of supervision should not have relevance to the period of remission of sentence earned by the prisoner but should in all cases be one of 12 months; it suggests that misconduct within that period should lead to recommendations to the prison commissioners to recall the prisoner for further training, and that the limitation of 12 months' statutory after-care should also apply to those leaving corrective training irrespective of the length of their sentences. It is recommended that there be

close liaison between probation officers who will undertake after-care and social workers (where these exist) in prisons and that every effort should be made to give prisoners an understanding of what is meant by supervision and after-care on discharge—that it is more than the former "aid on discharge" which many of them expect as of right, yet scorn as inadequate.

A Valueless Provision

The committee also looked at the present provision of s. 29 of the Prison Act, 1952 (and s. 22 of the Criminal Justice Act, 1948), which require certain prisoners who have at least two previous serious prison sentences to report their addresses from time to time to the Central After-Care Association. This work has entailed considerable trouble and expense for the Association and for probation officers in checking addresses, with no useful purpose, and it has caused resentment to ex-prisoners who thought that a link with the Central After-Care Association implied help on discharge (which it did not). The Central After-Care Association has drawn attention to the apparent uselessness of this work and suggested that where reporting of addresses was needed this might be done directly to the police, but the committee, of which Sir Henry Studdy was a member, and which had the advice of the Association of Chief Police Officers, reports that even from the police point of view the provision serves no useful purpose, and it recommends therefore that this should be repealed. This would relieve the C.A.C.A. and the probation service of a certain amount of particularly unrewarding work and it is hoped the recommendation will be acted on speedily.

The report of this committee is a welcome one, and a justification of pressure from the Magistrates' Association over a number of years for some extended supervision of, and after-care for, ex-prisoners. It is a justification of the statutory services in the field of after-care, though the socially-concerned individual can still do much by personal friendship in support of the assistance given through more official channels.

MAN'S PREROGATIVE

(*Concluded from p.* 748, *ante*)

It is more interesting, and more important, to compare opinions expressed on certain aspects of enforcement by the Director of Public Prosecutions and by the Customs witnesses. Their divergence shows how desirable it is to produce a measure of co-ordination, despite the opinion of the then Under-Secretary of State at question 82, that co-ordination was impracticable even among chief constables: *a fortiori*, we suppose, between the police and the Customs working under different statutory powers.

About *Ulysses*, for example, the Director of Public Prosecutions said he would not dream of prosecuting, or of supporting seizure and destruction under Lord Campbell's Act, because the book was in his opinion so obscure and well-nigh unreadable that no ordinary person could be corrupted by it. Although the Director under further examination by the Select Committee tried to explain away this answer as a joke, it is not so silly as it looks at first. It is in effect the reason which leads the police and officials in Whitehall to allow circulation of parts of the Greek and Latin classics, which English publishers have not ventured to reprint in English. Official censors can at any rate excuse themselves, by saying they do not understand it, from weighing the merits of a book or picture intended solely as a work of art (we do not know whether it has ever been claimed that *Ulysses* had any other function), even if this means that they pounce upon works of inferior quality such as *The Well of Loneliness*, which they can understand at any rate so far as realizing that the author hopes to enlighten readers about a social problem.

On the other hand, the Customs kept *Ulysses* out of the United Kingdom for many years, until shamed into admitting it by the famous judgment in the United States, but their witnesses treated as unthinkable an exclusion by them of *The Decameron*. This was not even stopped at the ports by their officials after the decision of the Swindon magistrates (and two earlier similar decisions), pending an appeal in the Swindon case. The reason they gave was that *The Decameron* was "literature," and (they said) they did not agree with the decisions of the courts. We are not concerned to quarrel with their assignment of higher literary merit to Boccaccio than to James Joyce and D. H. Lawrence, any more than to suggest that the Director of Public Prosecutions was wrong in what he said about *Ulysses*. What we are concerned to point out is that the Customs witnesses were avowedly claiming a discretion, about things they could understand, whereas the general attitude of the Director of Public Prosecutions was that in any doubtful case he would go to counsel (question 213), who would advise him what the courts would be likely to decide. The inconsistency here revealed between the major organs of official censorship in relation to some of the main instances of censorship in the last few years is fundamental, in that the Director's test of unintelligibility, if applied to importations, would blow out of the water whatever justification the Customs might allege for their action since 1952 against Monsieur Genet's books.

Actions were shown to be as inconsistent as utterances at question 597, where the Select Committee compared the Customs black list, circulated to officials at the ports, with the list drawn up for internal use by the metropolitan police. Only 13 books were found on both lists, and the Customs list was far the longer. The Commissioner of Police said that he and his staff had no knowledge of the Customs list, nor apparently do the Customs know of the police list, and, although they are informed by the Home Office of decisions upon books by an English court, they exercise their own discretion (question 444) about putting a book upon their list.

This independence of action on the part of the public agents of British literary and artistic censorship has grown up gradually. It may be nobody's fault: it is a natural result of drift, of the national habit of piecemeal legislation. But a double uncertainty in censorship is bad for everyone concerned, even for the censors. We speak of "censorship" deliberately, in this paragraph and some preceding paragraphs, and at question 234 the Director of Public Prosecutions accepted the term, despite the usual convention that in this country censorship does not exist. The machinery worked by the police, especially by way of disclaimers, involves exclusion from public circulation of books and pictures without any adjudication by a court, and the working of the Customs Acts is equally plainly an official censorship. Challenged by the Select Committee upon the ground that the private person whose property has been seized is forced, if he wishes to obtain a decision of the courts, to come into

the open in the character of claimant to a book or picture which has been seized as being *prima facie* obscene, the Customs witnesses retorted that this was inevitable because you cannot have proceedings in court without an individual claimant or respondent. The assimilation we have suggested of proceedings after the stage of seizure, both under the Customs legislation and under Lord Campbell's Act, would remove one objection to the present practices. More important, our suggestion that the Director of Public Prosecutions should always be brought in to apply for an order of destruction would place responsibility for all branches of censorship in a single pair of hands.*

It is indeed not clear from the evidence given to the Select Committee how far censorship is centralized at present, apart from the Customs who admit being a law unto themselves. The memorandum put in by provincial chief constables appears to indicate that the Director of Public Prosecutions is brought in even before the stage of initial seizure under the Obscene Publications Act, 1857: that is to say, at an earlier stage than we ourselves think necessary. The memoranda put in by the Director himself and by the metropolitan police are not explicit about the stage where he is brought in in London, nor does it seem to have been shown in the oral evidence whether the magistrate's order for search and seizure is ever applied for by the metropolitan police without the Director's intervention at that stage. The answers to questions 664–6 relate in terms to prosecution only. Whatever the present practice it would relieve the Director's office of unnecessary work if, as we have suggested earlier, the police both in London and in the provinces were left free to apply for an order for search and seizure, on the understanding that nothing further would happen without the Director's intervention. This would imply the corollary that, when the Director was brought in either by the police or by the Customs, as also when there was any question of a prosecution, for the common law misdemeanour as at present or for the new statutory offence suggested in its place, the Director would have to exercise a genuine discretion. It is largely for the sake of establishing this discretion as an administrative function that we attach such great importance to putting the whole machinery into one pair of hands. It seems, particularly from the oral evidence given before the Select Committee, that at present the prosecuting function has often been treated as too automatic. The Director said indeed that in the notorious Swindon case he "automatically" instructed counsel upon the appeal to quarter sessions, to argue in support of the magistrates' decision. It is true that once or twice, as when he was speaking of *Ulysses*, he indicated that he or his staff might decide on their own account that no proceedings should be taken, but the inference seemed to be that usually counsel's opinion would be taken, if there was any doubt at all. "That (he said at question 214) is my protection."

This we consider unsatisfactory; contrary to the principle underlying Lord Campbell's Act itself, and contrary to the common law as understood by Parliament when that Act was passed. On receiving papers for advice counsel must, by the nature of his training and approach, ask himself the question: "Could I convince the court if I were instructed to take this matter into court?" If he thinks there is a reasonable chance, he is likely to advise that proceedings should be taken: in other words, he advises that there is a misdemeanour. But this is only half, as we have already pointed out, of the question posed by Lord Campbell's Act. It is no part of counsel's duty, on receiving papers in this way, to consider whether upon merits the book or picture is one "proper to be prosecuted": this underlying (fundamental) question is not for counsel but for those instructing him—it calls, in other words, for decision by a person exercising an administrative function.

We have suggested the Director of Public Prosecutions for this administrative function, not because we regard his office as ideally the best place for it but because we can think of no one else. It would be undesirable that the function should be entrusted to a Minister, who would be subject to constant pressure on one side or the other.

The Director of Public Prosecutions is technically under the control of the Attorney-General, who is a Minister but is by the nature of his office comparatively immune, as compared with other members of the Government, from direct public pressure to act or to refrain from acting. What then do we ask of the Director of Public Prosecutions? It is that he shall not automatically send a book or picture to counsel for advice upon the question whether proceedings would succeed: that he will himself in the first instance consider whether it is in the public interest that proceedings should be taken. Even if there is a chance that they will prove successful, it does not follow that they ought to be set on foot.

It may be thought too delicate a task to give a statutory instruction to the Director of Public Prosecutions, about the manner in which he shall exercise the discretion which we think will have to be entrusted to him, but in reality the Obscene Publications Act, 1857, has itself supplied a formula already. One would like to think that the public interest could always be left to the courts at a stage when the matter reaches them, but the Select Committee pointed to discrepant decisions of the High Court (declining to accept the opinion of the Director of Public Prosecutions that there was really no discrepancy) while the evidence of the provincial chief constables admitted frankly that the result of proceedings might differ, according as they were taken before one bench or another. It cannot be right that the fate of a book or picture, and the reputation of the author or artist, should depend upon the accident whether it has been bought at Hogsnorton or Much Binding, coupled with the opinion of counsel that, if proceedings are taken at one place rather than another, it is likely that a conviction or an order for destruction can be secured. It is therefore essential that the question whether to go before the courts at all, with a particular publication, shall be determined by the exercise of a responsible administrative discretion at some central point.

With such a canalizing of responsibility, and with the Director of Public Prosecutions in all cases addressing his mind to the question: "Is this proper to be prosecuted?" the law could be made to steer a middle course which, we believe, would be approved by the majority of educated persons.

*One unimportant exception might be made. Section 4 of the Vagrancy Act, 1824, makes it an offence to exhibit publicly, in a shop window or elsewhere, an obscene or indecent print. Subject to wording, we think this might be re-enacted, without requiring the Director's consent to prosecution. We have in mind such a case as where a standard medical treatise is put in a shop window, opened at an illustration of the genital organs, or putting in the shop window a book, which may be innocuous, tricked out (to deceive the unwary buyer) in an indecently suggestive wrapper. These things are like urination in the street; they seem to us to be offences apt for summary proceedings, which could be left to the police. A small fine would be enough, and there would be no question of destruction of the book, or of stigmatizing its publisher and author, as there is in a prosecution for the present common law misdemeanour.

NEW LAW ON FARM HYGIENE

By PHILIP J. CONRAD, F.C.I.S., D.P.A. (Lond.), D.M.A.

In June, two years after the passing of the Agriculture (Safety, Health and Welfare Provisions) Act, 1956, the Ministry of Agriculture, Fisheries and Food circulated to all local authorities, including county councils (for information), a memorandum of guidance on the administration of ss. 3 and 5 of the Act which placed new duties on local authorities in respect of farm hygiene.

Outside London, the local authorities concerned are the councils of boroughs, urban districts, and rural districts (s. 24) and their functions are to require, in certain circumstances, the provision of sanitary conveniences (ordinarily of an improvized nature) on farms where workers are employed (s. 3 (1)), and of ensuring that conveniences on such farms, whether or not provided at the authorities' instance, are kept clean (s. 5 (1)). Fixed equipment is only to be required in special circumstances. The memorandum explains that the object is to ensure that suitable and adequate sanitary conveniences are available to farm workers, without requiring unnecessary or unreasonably expensive facilities, and it adds that it has been recognized that for the diverse conditions of agricultural employment it would be inappropriate to apply universal standards, and each case will have to be judged on its merits.

The memorandum goes on to deal exhaustively with the extent of the powers vested in local authorities and the procedure to be followed in serving statutory notices under the Act. In view of the widespread distribution of this official memorandum comparatively recently, it seems superfluous to repeat what it says. It is probably still in sight on many desks but, if not, its contents are fresh in the minds of the chief and other officers primarily concerned. Accordingly it is proposed to confine the remainder of this article to comments on some aspects of the new law.

Hitherto, local (sanitary) authorities have not been directly concerned with sanitary considerations affecting a farm, other than the farmhouse and workers' cottages, under housing and public health legislation. This new field of functions will tax an already overburdened public health inspectorate which has been suffering from a dearth of recruits. The rurals will obviously feel the impact most, but there are many urban authorities whose boundaries embrace a substantial agricultural area. Bearing in mind the limits of endurance of this undermanned team of public health inspectors (taking them collectively), there is unlikely to be a spurt of activity under ss. 3 and 5 of the Act. The work involved will, especially in rural districts and more so in particular areas like the Fens, be a substantial addition to normal duties but rarely sufficient to warrant additional qualified staff, and the existing officers will have to tackle the task as time and other duties permit. The Minister of Agriculture, Fisheries and Food is probably reconciled to the prospect of slow but sure progress, rather than startling results in the immediate future. In fact, the delay in issuing the circular and accompanying memorandum in respect of an Act passed in 1956 may be indicative of the Minister's past recognition of the difficulties that might handicap effective action. If so, evidently he considers the present time is opportune to go ahead.

Another deterring factor is the manner in which the new statutory provisions are framed. They are so hemmed about by " ifs and buts " that there is likely to be some hesitancy on the part of any local authority to be one of the pioneers. The evident desire to safeguard the agricultural fraternity from arbitrary action and unreasonable requirements has led to an infiltration into the Act (and the memorandum) of the impression that, if too ambitiously enforced, the new law might quickly gain bad repute and outrage the farmers. Accordingly, great stress is placed on the considerations to be taken into account and, in particular, local authorities will, if they wish to insist on fixed equipment, have to state their grounds for deeming that special circumstances of sufficient importance exist. It all reduces itself to the simple question—" What is both essential and practical ? " and there may be a variety of answers as time goes on, for opinions are bound to differ ; hence the likelihood of a cautious approach to action in these " uncharted waters." A few ill-conceived and irrational requirements could do infinite harm to the progress and success of the work to be done, and the saying " make haste slowly " may be a wise one in the circumstances.

There is a sensible provision that where a farm is in the districts of more than one authority it is deemed to be wholly situated in the district of the authority covering the largest part of the farm. Any borderline cases will have to be settled in an air of goodwill between the authorities affected with as little ado as possible, for petty arguments in this respect would not enhance good public relations with the farming community.

The Minister is obliged to make an annual report to Parliament of his proceedings under the Act (s. 21 (1)) and, not surprisingly, the circular therefore expresses the hope that local authorities will be able to furnish the department on request with occasional reports of action taken, and on conditions in their areas generally.

Responsibility for ensuring provision of washing facilities on farms lies directly with the Minister (s. 3 (2)). Despite what has been said about the shortage of public health inspectors, this arrangement looks inconsistent on the face of it and appears, at any rate at first sight, to push the local authorities aside and to duplicate the inspectorate for closely allied functions. Representations to this effect do, however, produce the explanation that the question was fully discussed with the local authority associations when the proposals for legislation were first made, and that it was then pointed out that the Minister was already responsible for regulations on washing facilities on dairy farms, where hot and cold water has to be provided for washing purposes, and that the provisions on washing facilities under the Agriculture (Poisonous Substances) Act, 1952, are also enforced by the Minister. Moreover, as the Minister's inspectors would have to visit farms for the purpose of the safety provisions of both these Acts as well as for inspections under the Agricultural Wages Act, 1948, they can while on the farm make the necessary inquiries about washing facilities, which are a comparatively simple matter. This subject received further attention when the Bill was passing through Parliament, but the consensus of opinion was in favour of retaining the designation of the Minister for this purpose.

WEEKLY NOTES OF CASES

COURT OF APPEAL

(Before Jenkins, Romer and Willmer, L.JJ.)

October 3, 6, 27, 1958.

LONDON COUNTY COUNCIL *v.* CENTRAL LAND BOARD

Town and Country Planning—Development value—Determination—Estate acquired for building purposes—Planning permission for development of whole land—Heavy expenditure necessary to develop part of land—No development value if whole land developed—High value if part only developed—Town and Country Planning Act, 1947 (10 *and* 11 *Geo.* 6, *c.* 51), *s.* 70.

APPEAL from decision of Danckwerts, J., reported (1958) 122 J.P. 288.

A county council acquired certain land and obtained planning permission to develop the whole of it as a housing estate. Most of the land was suitable for building houses, but on part of it heavy expenditure, exceeding the value of the land as a whole for building purposes, was necessary before houses could be built there. If this part were not developed at all and the rest of the land were developed as permitted, the increase in the value of the land as a whole due to the permission to build would be £22,500. The Central Land Board contended that the county council was at liberty to carry out the development so far as it was profitable and was not obliged to develop the whole of the land, and, accordingly, claimed a development charge of £22,500.

Held, the development charge must be assessed on the footing that all the permitted development would be carried out, and, as the value of the land as a whole would not be increased if this were done, no development charge was payable.

Appeal dismissed.

Per curiam. Practice Notes on the working of the Act provided by the Board for its officers are wholly inadmissible for the purpose of construing the Act, and so should neither be considered by the Court nor allowed by the Court to be read as part of counsels' argument.

Quaere whether the manifestation by a developer to carry out part only of the development for which planning permission had been given would be a ground for the revocation of such permission under s. 21 (1) of the Act.

Counsel: *Squibb, Q.C.*, and *Buckley*, for the Central Land Board; *H. E. Francis* for the county council.

Solicitors: *Treasury Solicitor; J. G. Barr.*

(Reported by Henry Summerfield, Esq., Barrister-at-Law.)

(Before Lord Evershed, M.R., Sellers and Pearce, L.JJ.)

AUTEN *v.* RAYNER AND OTHERS

October 20, 21, 22, November 4, 1958.

Police Records—Production as evidence—Objection by Home Secretary—Finality.

APPEAL from Ashworth, J.

The plaintiff claimed from the defendants damages for conspiracy to defraud, false imprisonment, and malicious prosecution. The third defendant was a detective constable in the Metropolitan Police Force, and in his affidavit of documents he claimed privilege for reports made by him to his superior officers and communications passing between the Metropolitan Police Force and other police forces on the ground that their production would not be in the public interest. The Home Secretary objected to the production of those documents on the same ground. The plaintiff asked for an order that those documents should be produced, *inter alia*, on the ground that fraud against a member of the police force had been alleged.

Held: (i) the principle that in an action the right to privilege might be lost where fraud was alleged was not applicable to the right of the Crown to withhold documents from discovery; (ii) the decision of a responsible Minister of the Crown as to the non-disclosure of documents which was unimpeachable on its face was final.

Appeal dismissed.

Counsel: *Pritt, Q.C.*, and *Platts-Mills*, for the plaintiff; the *Attorney-General* (*Sir Reginald Manningham-Buller, Q.C.*) and *Rodger Winn*, for the Home Secretary; *H. K. Woolf*, for the first and second defendants; *Veale, Q.C.*, and *Stabb*, for the third defendant.

Solicitors: *W. H. Thompson; Treasury Solicitor; Herbert Baron & Co.; Solicitor for the Metropolitan Police.*

(Reported by F. Guttman, Esq., Barrister-at-Law.)

CHANCERY DIVISION

(Before Danckwerts, J.)

Re SAHAL'S WILL TRUSTS. ALLIANCE ASSURANCE CO. *v.* ATTORNEY-GENERAL AND OTHERS

October 30, 1958

Charity—Children's home—Gift to local authority of house to establish a children's home—Bequest for benefit of one or more children in home—Alternative purpose—Hostel for young soldiers, sailors, airmen or merchant seamen, or old people.

ORIGINATING SUMMONS.

The testator, by his will dated November 23, 1953, gave his dwelling-house to a local authority "to use and maintain the same as a children's home." He further bequeathed to the local authority the sum of £2,000 "to apply the yearly income therefrom for the benefit of such one or more of the children for the time being resident in the said house," provided that, if the corporation "shall discontinue the use of the said dwelling-house as a children's home," it should be used and maintained "as a hostel for young soldiers sailors airmen or merchant seamen or for poor aged and infirm people of the neighbourhood." The local authority intended to accept the gift if they could use it as a home for old people.

Held: (i) the gift to the local authority for founding a children's home was a charitable gift (*Re Cole* (*deceased*), (1958) 122 J.P. 433, distinguished), but the gift for the benefit of children in the home was invalid because it could not be distinguished from a similar gift which was declared void in *Re Cole;* (ii) the proviso contained alternative trusts, and gifts for a home for poor aged people and a hostel for young servicemen or merchant seamen were both charitable gifts, and, therefore, the local authority was entitled to use the house for a home for aged people without first having established a children's home.

Counsel: *Wolfe*, for the trustee; *D. B. Buckley*, for the *Attorney-General; H. C. Easton*, for Salford Corporation.

Solicitors: *Skelton & Co.*, Manchester; *Treasury Solicitor;* Town Clerk, Salford.

(Reported by F. Guttman, Esq., Barrister-at-Law.)

PROBATE, DIVORCE AND ADMIRALTY DIVISION

(Before Lord Merriman, P., and Hewson, J.)

JONES *v.* JONES

October 15, 1958.

Husband and Wife—Maintenance—Wilful neglect to maintain—No fault on part of husband—Punctual payments by husband under order made under National Assistance Act, 1948, *s.* 43 *—Husband ignorant of deterioration in wife's circumstances.*

APPEAL from justices.

The wife was in receipt of assistance under the National Assistance Act, 1948, and on October 6, 1953, a magistrates' court made an order under s. 43 of that Act that the husband should pay her £2 17*s.* 6*d.* per week. This sum was punctually and regularly paid. In May, 1958, the wife complained to the same magistrates' court under the Summary Jurisdiction (Married Women) Act, 1895, s. 4, alleging that the husband had been guilty of wilful neglect to provide reasonable maintenance for her. The husband had no knowledge, prior to the date of the complaint, that the wife's circumstances had changed and that the sum of £2 17*s.* 6*d.* a week was not sufficient for her needs. On June 3, 1958, the magistrates found the wife's complaint proved and made a further order against the husband.

Held: the order of June 3, 1958, would be set aside since the husband, who had punctually paid under the order of October 6, 1953, and was ignorant of any change in the wife's circumstances, could not be held guilty of "wilful neglect to provide reasonable maintenance for her," a phrase which implied an element of misconduct.

Counsel: *Perrett*, for the husband; *Stuckey* (*G. H. Crispin* with him) for the wife.

Solicitors: *John T. Lewis & Woods*, for *Norman Morgan & Davies*, Cardiff; *Gregory, Rowcliffe & Co.*, for *Harrison & Sons*, Welshpool.

(Reported by G. F. L. Bridgman, Esq., Barrister-at-Law.)

REVIEWS

Underhill's Law of Partnership. Seventh Edition. By George Hesketh. London: Butterworth & Co. (Publishers) Ltd. Price 21s. net.

Underhill's Law of Partnership has stood for so long as a convenient introduction to the law, that no elaborate statement of the learned author's purpose is required. Sir Arthur Underhill intended it as a "broad sketch" which would be useful to law students and commercial men, whilst lawyers requiring a "finished picture" were advised to look at larger works. Within its own sphere it is as useful today as when the first edition appeared at the beginning of the century. In this seventh edition no radical changes have been made, but the learned editor has brought the text up to date by reference to the latest decisions, and the Law Reform (Enforcement of Contracts) Act, 1954. We have always thought that for students' purposes the explanation by *Underhill* of the essential elements of partnership could not be bettered. The explanation rests largely upon case law, and adequate extracts are given from judgments by Jessel, M.R., James, L.J., and other masters of Chancery principles. The relation of partners to one another, and particularly the doctrine or *uberrima fides* as an implied term, is postponed to the chapter upon the relation of partners to outsiders. This may seem illogical, but in daily practice the lawyer is more often concerned with questions about a firm's contracts and torts affecting third persons than with its internal relations. Both topics are adequately treated, with illustrations drawn from actual decisions of the courts, either in the text or in footnotes.

Dissolution, either by agreement or by recourse to the courts, is explained with a helpful statement of the points which have to be considered after dissolution, including realization of the assets. Recourse to the joint and separate assets of partners in case of insolvency, and against the estate of a bankrupt partner, is set out as fully as the student needs to know about it.

We think it was Lord Justice Buckley many years ago, who remarked regretfully upon the small extent to which limited partnership, well known abroad, had been favoured by the commercial community in England. Whatever the reasons for this, the fact remains, but the Limited Partnership Act, 1907, is printed in the present work, and there is a short explanatory chapter. The curious episode in legal history, by which it was for some time supposed in the 19th century that limited partnerships had been sanctioned by Parliament in 1865, will be found earlier in the book.

As in previous editions, *Underhill* can be confidently recommended to tutors and others who have to prepare students for examinations; and it is also one of those small books which the practising lawyer can conveniently keep at hand, with the knowledge that a great many day to day questions will be answered by it.

The Rating of Dwellings. London: Institute of Municipal Treasurers and Accountants (Incorporated). Price 25s. net.

This is a "research study" by four treasurers of local authorities, one of a series of invaluable studies which the Institute of Municipal Treasurers and Accountants has published from time to time, with the formal warning that as a body it is not responsible for the opinions expressed.

The sub-title of the work is "History and General Survey." Since dwelling-houses account for nearly half the total of rateable values entered in the new valuation list dated April 1, 1956, it is evident that the basis of valuation of dwelling-houses is the most important single factor, in the revenue which local authorities derive from local sources. In a general sense, we suppose all persons concerned with local government finance are acquainted with the history of rating, but even our own readers, who live with the subject from day to day, will find it interesting and helpful to refresh their memory of many historical points collected in the earlier part of the present work, and with the later part which deals with the tangled story of the years between the wars.

Coming to more recent times, chapter headings indicate the manner of treatment: "A fresh approach; failure of an experiment; the marking-time period."

As the authors say, forecasting is a hazardous business, but this careful survey of what has already taken place, owing to the combined operation of economic and political forces, may give some clue to what should happen in 1961 with the beginning of a new quinquennial period—subject always to the proviso that any forecast may (as has nearly always happened in recent history) be upset by external events. We have not for some time come across a work of this small size on a financial topic which contains so much stimulus to thought, or (we may add) a more devastating exposure, by impartial persons standing outside politics, of the confusion which political cowardice can introduce into a technical field.

Construction of Buildings in London. London County Council. Price 17s. 6d. net.

For many years there were complaints about the law governing building in London, on two main grounds. The first was that it was obsolete in substance, as compared with the corresponding provisions in the remainder of the country. The second was that a great deal, of what the builder and architect wanted to know in practice, was not ascertainable from published sources. The first complaint has much less force today than it had (say) 20 years ago. In 1930 the London county council procured a consolidating Building Act, and between that year and the outbreak of war in 1939 had done a good deal to bring the positive requirements of building law in London into line with modern methods of controlling building, which had been worked out and put into operation by provincial local authorities. It remained true, however, that a mass of information about practical application of the law existed only in the bosoms of officials or the records at the county hall, apart from the positive enactments. The very rigidity of those enactments in London had produced a machinery of discretionary waivers, which would not have been needed if the legal provisions had been modernized. Partly because of these waivers, and partly because of the division of authority between the officials at county hall and the district surveyors, a great vested interest had grown up in the maintenance of mysterious processes. In the present work the county council have come into the open, and have collected not merely the positive enactments comprised in statutes, byelaws and regulations having the force of law, but also information about their own practice in dealing with discretionary matters. They have brought in also extracts from general Acts which apply to London as well as to the provinces.

The preface properly reminds the reader that this is not a work of authority, in the sense that the inclusion or exclusion of any matter has legal significance. It still remains the responsibility of the architect and builder to obtain legal advice when necessary, and to make sure that he is complying with any positive enactment. He must also, when exposed to the operation of a discretionary requirement, find out for himself what recourse he may have to any superior authority. Notwithstanding this caution, it can, however, be said that the work before us tells all persons who have to deal with London building more about their position than has previously been set out in any official publication. London building law being what it is (as the result of historical divergence from the main stream of public control of building in this country), the work will be of very high value to all those concerned.

Wurtzburg's Building Society Law. Eleventh Edition. By John Mills. Assisted by Bryan J. H. Clauson. London: Stevens & Sons, Ltd. 1958. Price £2 10s. net.

The first edition of *Wurtzburg* appeared in 1886, dealing with the code substantially established by the Building Societies Acts, 1874–1884; further editions have come out regularly, corresponding to the main supplementary enactments. This eleventh edition has not greatly changed from the last, but the fact that three editions have been necessary since the end of the second world war shows that the law on this subject is liable to fairly frequent alterations. These alterations naturally flow from the important position which building societies occupy in the modern national economy. The book is said by the publishers to be intended for students as well as legal practitioners; perhaps even more for officials of building societies, who may often have to make themselves acquainted with the provisions of statutes or statutory instruments, and to keep abreast of case law. With this in mind, it is arranged in narrative form, clearly divided into paragraphs, and strikes us as exactly right for the purposes for which it is intended. Approximately one-third of the volume is taken up by the text of statutory provisions and statutory instruments,

followed by specimen accounts and similar matters. Here particular interest for the ordinary reader occurs in the note upon income tax arrangements, since the taxation of building societies affects a large number of mainly small capitalists. Persons who are buying houses through building societies (and such persons comprise a large section of the public) will find the legal effect of the law of mortgages as affecting building societies clearly set out, in the chapter referring to mortgages. At the beginning of the book there are useful explanations of the difference between a building society and some superficially analogous concerns, such as a freehold land society or company dealing in land. The book was compiled with the purpose of stating the law as at the end of 1957, but the preface, dated June, 1958, brings it up to date, for practical purposes, to the middle of this year, giving several items on legislation and decided cases with directions to note them on specified pages.

The long history of this work is an indication of its usefulness to those for whom it is primarily intended. It might advantageously be added to the office library of many local authorities; indeed, although we are not generally favourable to the idea of the layman's trying to find out the law for himself, we think this is a law book which could usefully be placed in many public libraries.

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

EXAMINING MAGISTRATES

At question time in the Commons, Mr. H. Hynd (Accrington) asked the Secretary of State for the Home Department whether he now proposed to implement the Report of the Tucker Committee on Proceedings before Examining Magistrates.

The Secretary of State for the Home Department, Mr. R. A. Butler, replied that he was studying the committee's report carefully. The Government had not yet reached a decision on the recommendations, but he did not think that, if it were decided to implement them, it would be possible to present prospects to find time for legislation this session.

DRUNKENNESS

Mr. C. J. Simmons (Brierley Hill) asked the Secretary of State for the Home Department whether he was now in a position to state the nature and personnel of the committee of inquiry which he had promised to institute with reference to the increase in youthful delinquency and drunkenness.

Mr. Butler replied that he was arranging for the Social Survey Division of the Central Office of Information to carry out an investigation among police forces in selected areas into the continuing increase in the number of offences of drunkenness and to make a report to him. The investigation would cover all age groups, and not only offences by young persons.

AUTO SALES

Mr. S. Hastings (Barking) asked the Secretary of State whether his attention had been called to the fact that although it was illegal to sell cigarettes to children, they could, and did, purchase cigarettes freely from automatic machines, and that it went far to undo the propaganda that was carried out in schools; and whether he would introduce legislation to make the sale of cigarettes from automatic machines illegal.

Mr. Butler replied that s. 7 (2) of the Children and Young Persons Act, 1933, enabled a summary court, if satisfied on complaint that any automatic machine for the sale of tobacco was being extensively used by persons apparently under the age of 16, to order precautions to be taken to prevent the machine being so used or, if necessary, its removal. On the information before him he did not feel justified in proposing a further restriction.

FLICK-KNIVES

Mr. B. Janner (Leicester, N.W.) asked the President of the Board of Trade whether he would prohibit the import of flick-knives, in view of the increase in crimes involving the use of those implements.

The President of the Board of Trade, Sir David Eccles, replied that as he had explained before, flick-knives were necessary to certain trades and employment. It was for the Home Office to estimate the danger to public safety of their use for improper purposes.

Mr. Janner: "But is the President not aware that quite sufficient of these murderous weapons are being manufactured in this country? Is he not aware that youngsters are using these knives in an increasing number of cases and that the courts are very strongly condemning the possibility of their obtaining them without some kind of restriction? Will he not do something about it?

Sir David: "It is really for the police to say whether the suppression of manufacture and import for which Mr. Janner asks would, in fact, achieve the object. From the point of view of the Board of Trade, these knives are essential to certain trades."

PERSONALIA

APPOINTMENTS

Mr. L. J. Dunnett, C.B., C.M.G., has been appointed a deputy secretary in the Ministry of Transport and Civil Aviation. Mr. Dunnett will take charge of inland transport matters at the Ministry in place of Mr. P. Faulkner who will take over shipping matters. These changes were effective from November 3, last.

The following Board of Trade appointments have been announced: Mr. Charles George Churcher has been appointed an assistant official receiver for the bankruptcy district of the county courts of Brighton, Eastbourne, Hastings and Tunbridge Wells. This appointment took effect from November 17, last.

Mr. Philip William Nunn has been appointed an assistant official receiver for the bankruptcy district of the county courts of Cardiff and Barry, Blackwood, Tredegar and Abertillery, Newport (Mon.), Pontypridd, Ystradyfodwg and Porth and the bankruptcy district of the county courts of Swansea, Aberdare, Aberystwyth, Bridgend, Carmarthen, Haverfordwest, Merthyr Tydfil, Neath and Port Talbot. This appointment took effect from October 28, last.

Mr. Stephen Gerald Howard, Q.C., has been appointed recorder of Southend. He was formerly recorder of Ipswich.

Mr. John Bowman Tomlinson, who has spent 27 years in local government service, has been recommended by the estates committee of Bristol for the appointment of deputy town clerk; Mr. Tomlinson was assistant to the present town clerk, Mr. Alexander Pickard, when the latter was town clerk of Hull. Mr. Alfred Arthur John Symons, who is at present senior committee clerk in the town clerk's department was appointed administrative assistant in the town clerk's department at the same meeting.

Mr. Malcolm Stanley Reynolds, B.A. (Oxon.), has been appointed assistant solicitor to Great Yarmouth county borough. He is at present legal assistant with the county borough of Newport (Mon.). Mr. Reynolds succeeds Mr. M. P. Whitlock, formerly assistant solicitor with the borough of Lowestoft, who has taken an appointment with the National Coal Board.

Mr. W. Clifford, B.Sc., Econ. (Hons.), LL.B. (Hons.) (Lond.), director of social development, Cyprus, has been appointed director of welfare and probation services, Northern Rhodesia. Mr. Clifford has been in Cyprus since 1952.

Mr. Charles J. Grant, at present a temporary probation officer in the London Probation Service, attached to the Lambeth magistrates' court, has been appointed additional probation officer for the Lancashire No. 3 Combined Area Committee.

OBITUARY

Mr. Claude Hornby, founder of the London (Criminal Courts) Solicitors' Association, has died at the age of 69. He practised at Marlborough Street and other London courts for over 40 years.

Mr. Alfred Ernest Coley, who retired in 1948 from the position of assistant town clerk of Birmingham, has died. At the time of his retirement, he had been associated with local government for 41 years.

Mr. Charles Breslin, registrar of Banbury, Oxon, has died at the age of 52. Mr. C. J. Burrows, the former registrar, has come back from retirement to take the post temporarily.

Sir Herbert Pearson, puisne Judge of the High Court, Calcutta, from 1920 to 1933, has died at the age of 80. Sir Herbert was educated at Rugby and was called to the bar by the Inner Temple in 1902. In 1933 he was appointed legal advisor to the Secretary of State for India, retiring in 1938.

ANNUAL REPORTS, ETC.

KENT PROBATION REPORT

An outstanding feature of this report for the year ended December 31 last, is an increase of 15 *per cent.* in juvenile delinquents: 752 under 17 were placed on probation in the year as compared with 649 the previous year. For a county comprising large rural areas as well as Metropolitan and urban ones, this is a remarkable leap upwards, for the figure for 1956 was high enough in itself to cause disquiet. One feels that it is a reflection of a general slackening in the control over the spirits and energies of young people which is showing signs of getting completely out of hand, as witness the recent disgraceful disturbances in London and Nottingham. As we are living at a time when probation is being used more extensively than ever before, it may well be that people who are alarmed at the trends in crime will begin to ask the question: is there anything wrong with probation and its use by the courts? We should do well to be prepared for some such critical approach, one may say in advance, and without fear of contradiction, that there is nothing intrinsically wrong in the idea of giving offenders a chance to make good and to integrate themselves into society, which is the kernel of probation. What may well be open to question, however, is the selection of cases for probation, and the use of probation for the second and third time.

In this connexion it would be interesting if the figures of success given in this, as in other reports, were analysed a little more closely. We are told that in this country 74 *per cent.* of probationers finished their probation in a satisfactory manner. What would be interesting to know is how many of these 74 *per cent.* committed offences *within the next five years;* surely probation can only be said to be *fully* successful if the probationer becomes permanently a law-abiding citizen.

One would like to see a little more concern over this aspect of the working of the probation system. We are very closely informed on the day-to-day aspects; we are not nearly so well informed on the long term position.

NATIONAL ASSOCIATION OF ALMSHOUSES

It is pointed out in the recently issued annual report of the National Association of Almshouses that the trustees of these buildings are not primarily custodians of ancient buildings but, rather of funds for the provision of accommodation for the aged. A charitable trust being essentially for perpetuity, it follows that for the trustees faithfully to discharge their duties, the almshouses must be improved as the customs of successive generations dictate. A high percentage of the almshouses in England and Wales were built in the early or middle 19th century and, because buildings of that period are not protected by the Town and Country Planning Act, 1947, they are not only unprotected from the would-be demolisher but grants for their repair and improvements are less generous and more difficult to obtain.

Since the association was formed great strides have, however, been made in the modernization of almshouses in different parts of the country with the help of improvement grants under the Housing Acts. But much more in this direction remains to be done. It has sometimes been suggested that the term "almshouse" is out-of-date but the association, rightly we think, has resolutely refused to find another name for them.

WEST RIDING OF YORKSHIRE ACCOUNTS, 1957–58

The West Riding, with a population of 1,624,000 and an annual expenditure now exceeding £35,000,000 is one of the largest counties: county treasurer John McDonald is therefore all the more to be complimented on publishing his excellent summary of the county council's accounts so promptly.

Government grants met 74 *per cent.* of total revenue expenditure, and rates 17 *per cent.* Capital expenditure was a record at £3,400,000 and was incurred principally on education account. The county council is responsible for the education of 267,000 pupils at an annual cost per pupil of £30 in primary schools and £22 in secondary schools.

Net loan debt totalled £15,000,000 (education £12,000,000) and average rate of interest on loans outstanding at March 31, £4 6*s.* *per cent.*

The rate precepted was 10*s.* 4*d.*—within a farthing of the amount actually required. Previous years have produced some substantial surpluses and Mr. McDonald and his finance committee have put the money to good use, either by lending it temporarily for capital purposes or investing it outside. Interest earned in this way amounted during the year to £193,000.

The West Riding still maintains residential nurseries, the average number of places provided being 176 at a cost per child per week of £8 19*s.*

The magnitude of services is illustrated by a relatively small one. There are no less than 4,900 library service points and 20 travelling libraries.

During the year surplus superannuation fund monies amounting to £500,000 were invested internally. At March 31, investments totalled £5,900,000, of which £3,700,000 was invested externally. Average rate of interest earned overall was 4·1 *per cent.*

NOTICES

The next quarterly meeting of the Lawyers Christian Fellowship will be held at the Law Society's Hall, Bell Yard, W.C.2, on Tuesday, November 25, 1958, at 6.30 *p.m.* Tea will be available from 5.30 *p.m.* The meeting, to which all lawyers, law students and visitors are warmly welcomed, will be addressed by Mr. Henry Salt, Q.C., on the subject of "Lawyers and the Family."

On December 10, 1958, at 7.30 *p.m.*, the I.S.T.D. lecture in the hall of St. George's Institute, Bourdon Street, Davies Street, W.1, will be "The Juvenile Courts and the Local Authority Services." Miss D. E. Harvie is the lecturer; Mrs. M. Buchanan, J.P., in the chair.

THE SOLICITORS' ARTICLED CLERK'S SOCIETY

Activities for November and December, 1958, and January, 1959

November

Tuesday, 25: "Any Questions" Evening. Meet your new committee at a natter and noggin at 6.30 *p.m.* after which the panel will give its views on any questions put to it. A general discussion will follow. Then adjourn at 8.30 *p.m.* for coffee (or stronger refreshment).

December

Tuesday, 2: Debate at the Law Society's Hall at 6.30 *p.m.* Refreshments from 6 *p.m.* The motion to be debated is that "This House considers that it will be better for the United States to be part of the United Kingdom than for the United Kingdom to become the 50th state of America." We are pleased to join issue this evening with the London Junior Chamber of Commerce.

Thursday, 4: Annual Dinner and Dance. Have you bought your tickets yet?

Tuesday, 9: Debate with the Junior Technician Society at the Law Society's Hall. Refreshments from 6 *p.m.*–6.30 *p.m.* Subject will be announced later. Adjourn at 8.30 *p.m.* for coffee, etc.

Tuesday, 16: Comedy on Record at the Law Society's Hall at 6.30 *p.m.* Natter and noggin from 6.30 *p.m.* Members are invited to bring their own unusual and amusing records for an unusual evening.

Christmas Recess.

January, 1959

Tuesday, 6: New Members' Evening at the Law Society's Hall. All new members are welcome, including "old members." Refreshments will be available.

Tuesday, 13: Theatre Party. A party from S.A.C.S. will be going to see Donald Flanders and Michael Swann at the Fortune Theatre. All those interested are invited to ring Diana Courtney at GLE 1862 (office) or PER 0521 (home) before January 1, so that seats can be booked.

Wednesday, 28: First Full Length Play by the drama group at Royal Scottish Corporation Fleur-de-Lys Court, Fetter Lane, E.C.4. Keep this date vacant. Further details will be announced.

BOOKS AND PAPERS RECEIVED

(The inclusion in this feature of any book or paper received does not preclude its possible subsequent review or notice elsewhere in this journal.)

Bang to Rights. Frank Norman. Secker & Warburg. Price 15*s.*

The Law of Defamation. Richard O'Sullivan, Q.C., and Roland Brown. Sweet & Maxwell, Ltd. Price 25*s.*

Magnus on the Rent Act. Supplement. S. W. Magnus. Butterworth & Co. (Publishers) Ltd. Price 6*s.* 6*d.*, combined price 37*s.* 6*d.*

CORRESPONDENCE

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,—

I was interested to read in the J.P. under your Notes of the Week at p. 694, *ante,* the remarks regarding the lack of a sense of smell amongst old people.

As coroner I have had this brought home to me on a number of occasions and as recently as last August I held an inquest on the body of an elderly lady who died from accidental coal gas poisoning. The evidence revealed that she entirely lacked a sense of smell and was also rather hard of hearing. A gas tap of a swivel bar type was fixed to the skirting board by the side of the fireplace and was normally used by the deceased for her gas poker. The gas tap turned on very easily and in this particular case appeared to have been accidentally knocked on by the deceased when moving her clothes-maiden. The deceased lived alone but was regularly visited by members of her family.

This particular case and others of a like nature serve to emphasize the point you have made in your notes of the responsibility of relatives of old people checking gas appliances and for the Gas Council developing suitable appliances for use by the aged.

I do know that suitable gas poker appliances are available and can be obtained at any of the local gas board offices.

Yours faithfully,
F. R. S. NESBITT,
H.M. Coroner,
High Peak District of Derbyshire.

20 Hardwick Street,
Buxton, Derbyshire.

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

In the issue of October 18, your Note of the Week headed "Probation Failures" giving figures for the Surrey quarter sessions is not necessarily indicative of the position generally.

At the London sessions since January 1, 1957, 1,015 persons have been placed on probation, of whom 149 have failed.

During the same period 1,666 cases have been referred to probation officers for inquiries and reports. The figures quoted seem to show better results than those in the "Note of the Week," and I think they underline the importance of full inquiries, as less than three-quarters of the cases referred to probation officers were subsequently placed on probation. An adequate number of probation officers is now, with the increase in crime, more than ever important.

Actually at these sessions we have exactly the same staff of probation officers now, when we have over 900 cases on probation, as we had three years ago when the numbers were just over 600. I believe that it will be found, generally speaking, that staffing has failed to keep up with the numbers being placed on probation, with the result that supervision may not always be as effective as hoped.

Yours faithfully,
A. W. COCKBURN,
Chairman of Quarter Sessions.

Sessions House,
Newington Causeway, S.E.1.
October 23, 1958.

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

RIDING A BICYCLE TO THE COMMON DANGER
Can the Police Prosecute?

I refer to the case noted at p. 586, *ante,* where two infants were charged with riding pedal cycles to the common danger, contrary to s. 74 (2) of the Public Health Act, 1925. I wonder why the police did not prosecute them for dangerous or careless riding contrary to ss. 11 or 12 of the Road Traffic Act, 1930, as applied to pedal cycles by s. 11 of the Road Traffic Act, 1956.

Yours truly,
CAMBRIAN.

The Editor,
Justice of the Peace and
Local Government Review.

SIR,

At p. 645, *ante,* you "do not challenge a statement made on the wireless" that people are legally entitled to board a stationary omnibus provided there is room, at points other than the regular stopping places. I also do not challenge the statement, because I did not hear it, and its generality may have been qualified in some way.

As quoted by you, however, it is misleading. On many bus routes a would-be passenger commits an offence punishable under s. 84 (2) of the Road Traffic Act, 1930, if he mounts the bus elsewhere than at an authorized stop when asked by the conductor not to do so, and the driver, conductor, and police have specific legal power to remove him by force if he does not alight upon request: *see* P.P. 7 at 119 J.P.N. 79.

Yours faithfully,
F. NASIER.

Temple,
London, E.C.4.

[The purpose of our note was to suggest that people should be reasonable and considerate about the exercise of legal rights. In the light of our learned correspondent's letter we realize that we ought not to have brushed aside the legal question involved, and we admit that a note in such general terms deserved the description of being possibly misleading. We are much obliged to our correspondent.—*Ed., J.P. and L.G.R.*]

ADDITIONS TO COMMISSIONS

BIRMINGHAM CITY

Geoffrey Lloyd Armitage, 9 Somerset Road, Birmingham 20.
Mrs. Elizabeth Woodhead Arnott, 40 Beeches Road, Birmingham 22a.
George Alexander Elton Craig, 10 St. Augustine's Road, Edgbaston, Birmingham 16.
Joseph Patrick Fox, 22 Vernon Road, Edgbaston, Birmingham 16.
Geoffrey Knight Greening, 1 The Vale, Birmingham 11.
Ronald Albert Gregory, 12 Grafton Road, Birmingham 21.
Thomas George John, 66 Laurel Road, Birmingham 21.
Kenneth Malcolm Kelly, 137 Maryland Avenue, Birmingham 34.
Mrs. Joyce Scadeng Lever, 51 Oxford Road, Moseley Birmingham 13.
Norman Charlie Littleford, 26 Douglas Avenue, Birmingham 34.
Mrs. Mary McGeoch, 140 Bristol Road, Birmingham 5.
Thomas Bernard Mulroy, 7 Romney Close, Birmingham 28.
Robert James Price, 30 Petersfield Road, Hall Green, Birmingham 28.
Mrs. Hilda Stafford Ransome, 82 Farquhar Road, Birmingham 15.
Mrs. Hilda Anne Rees, 31 Greenhill Road, Moseley, Birmingham 13.
James Johnstone Smith, 9 Baldwins Lane, Birmingham 28.
George John Walford Turner, M.C., T.D., 41 Westfield Road, Edgbaston, Birmingham 17.
Mrs. Hilda Margarite Wickens, 6 Hornsey Road, Birmingham 22.
Daniel Joseph Wood, 44 New Street, Erdington, Birmingham 23.
Robert Howard Wright, 210 East Meadway, Birmingham 33.

NOW TURN TO PAGE 1

Before making a probation order, the court shall explain to the offender in ordinary language the effect of the order and that if he fails to comply therewith or commits another offence he will be liable to be sentenced for the original offence; and if the offender is not less than 14 years of age the court shall not make the order unless he expresses his willingness to comply with the requirements thereof. (Criminal Justice Act, 1948, s. 3.)

MARRIAGE À LA MODE

(*Concluded from p. 557, ante*)

Many strange anomalies, as we pointed out last week, are produced by the present compromise in matrimonial matters between precept and practice, by the divergences between avowed objects and actual results. From the point of view of constitutional law there is an even greater confusion. By virtue of the Act of Supremacy, 1534, and other contemporary Statutes, the Monarch is the only supreme Head of the Realm in matters spiritual, ecclesiastical and civil—Head, that is to say, of Parliament, the Courts, the Executive and the Established Church. In the first-named capacity the Monarch, for three centuries prior to the Matrimonial Causes Act, 1857, assented to the dissolution of sundry marriages through the medium of private Acts of Parliament —some 230 in the second half of that period. In and since 1857, the Monarch, as head of the Executive has, on several occasions, in the Speech from the Throne, assumed responsibility for the introduction of legislation conferring upon the High Court power to dissolve marriages on certain varying grounds, and on each occasion, as titular Head of Parliament, has signified to such legislation the Royal Assent. During the past hundred years, the High Court, acting in the Monarch's name, has dissolved innumerable marriages (over 52,000 in 1947 alone); in all these cases the former spouses became, by operation of law, single persons, capable of lawfully contracting new unions with other spouses. And, contemporaneously, the Established Church, again in the name of the Monarch as its Head, declares its refusal to accept the lawfulness of any such remarriage during the lifetime of the former spouse, and rejects, by implication, the legality of what Parliament has enacted, and the Courts, by virtue of its enactments, have decreed. No part of the law of England is celebrated for logical consistency; but when the great Departments of State speak with such discordant voices—each in the name of the same titular Head—it is permissible to call attention to the fact.

That the present anomalies are not confined to our own system is indicated by the recent Italian case of the Bishop of Prato (*The Times*, October 27). This dignitary had described a couple who had contracted a marriage by civil ceremony alone (as every Italian citizen is entitled, under the Constitution, to do if he so desires) as "living in a state of scandalous concubinage." The spouses took criminal proceedings against the Bishop for defamation, and he was duly convicted and fined;

> "whenever" said the Court of first instance "acts emanating from the ecclesiastical authority offend against the rights of citizens as guaranteed by the Constitution, the protection consecrated by law must come into operation in defence of those rights."

The Florentine Court of Appeal has now reversed the judgment, on the ground that the Bishop's conduct "did not constitute a crime." The appellate tribunal seems to have accepted the view that episcopal condemnation comes within the ecclesiastical jurisdiction, as the Constitution (since the Lateran Treaties of 1929) provides that the State and the Church are "each in its own sphere independent and sovereign." The full judgment has not yet (at the time of writing) been published; but it will be interesting to see how the two conflicting principles can be resolved.

In France, which is a secular State without any privileged or established church, the celebration of the civil ceremony by the local mayor, wearing his tricolour sash, is the essential part of every marriage. Successive French Constitutions since 1789 have been careful to preserve the secular principle, and the Fifth Republic is no exception. In these circumstances (said *The Times*):

> "a touch of light relief was lent to the serious business of saying 'yes' or 'no' in General de Gaulle's Constitutional Referendum by a young lady from a small village near Nîmes who, for reasons best known to herself, three times replied 'no' (apparently with resolute conviction) when asked by the mayor whether she would take as her husband the man she was supposed to be marrying."

Her subsequent change of mind was complicated by the conversion of the room where such ceremonies are performed into a polling-booth—giving the impression:

> "that the lady had to say 'yes' (or 'no') to the constitutional question before she could say 'yes' to her marriage."

It is understood that all ended (or, rather, began) happily.

In Soviet Russia, where the situation is similar to that in France, "brighter and gayer civil marriages, with music and car transport for the young couple, are to be part of an official drive to counteract the trend of church weddings, which is spreading even to Komsomol members." So said a broadcaster on Moscow Radio, complaining of the drabness of civil ceremonies, and advocating the need to make them more attractive by the reintroduction of "the good old national customs." The phrase "register office," he said, should be replaced by the words "palace of the family." (It may be doubted whether any such change of terminology would be effective to counter the drabness of the average register office in Britain, with its high, barred windows, its whitewashed walls, and its menacing printed notice (which is historically and anthropologically inaccurate) to the effect that "marriage is the voluntary union for life of one man and one woman, to the exclusion of all others." Not that the incidence of divorce among civil marriages here is any greater than among those celebrated in church, with all the concomitants of bridesmaids, best man, white veil, confetti, and the Wedding March from *Lohengrin* on the organ.)

However, the most original idea for Brighter and Better Marriages comes, as might be expected, from America. The *News Chronicle* reports a ceremony, in Hollywood's First Presbyterian Church, between a couple who were "matched by an electric computer." The technique successfully combines the best features of Aldous Huxley's *Brave New World* and the correspondence columns of *The Girl's Own Paper*. The spouses, who had never met before, were two of a crowd-scene, on television, whose life-stories were "fed" at random into the machine:—

> "It sorted out the facts that both had the same social background, the same religion, hobbies and type of parents; but that Robert was slightly better educated than Shirley—which, according to Hollywood marriage counsellors, was exactly as it should be. Shirley was then put under hypnosis, and told that the following week she would meet a strange man, who would prove attractive to her. The following week, on the television-show, she was introduced to three men, including Robert. Immediately Shirley chose Robert, and had an uncontrollable desire to kiss him."

The wedding ceremony has, of course, been shown on television, as also the happy couple's departure for a Hawaiian honeymoon—"paid for by the television show which was responsible." The title of its programme is *People are Funny*.

A.L.P.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Gaming—*Cheating at cards—Gaming Act*, 1845, *s.* 17—*Is offence triable summarily?*

Three men are charged with an offence against s. 17 of the Gaming Act, 1845, namely, cheating at cards and thereby defrauding a fourth man of the sum of £11.

Under the section those guilty of this conduct shall be deemed to be guilty of obtaining money by a false pretence and punished accordingly.

The section makes no mention of trial.

Is the offence triable summarily with the consent of the accused as in false pretences?

F. WHITE ROSE.

Answer.

The Gaming Act, 1845, makes the offence punishable as false pretences and, in our opinion, this is not the same as making it triable as false pretences. The charge is laid as contrary to s. 17 of the Act, and, since that section does not appear in sch. 1 to the Magistrates' Courts Act, 1952, we think the defendants must be committed for trial.

2.—Housing Act, 1957—*Clearance area—Possession of house whose occupier wishes to remain.*

My council have obtained a compulsory purchase order in respect of a clearance area in their district. The order has been confirmed and the necessary notices have been sent to the owners and occupiers in the area, but one owner-occupier refuses to leave his property. He has been offered the choice of three different types of council house, but has refused each offer. He insists that he is staying in his property until the bitter end. Is the official notice to enter the premises sufficient authority for the demolition contractor to enter the property concerned and begin demolition, or is it necessary for the council to obtain some type of order from the local court, in order to evict the owner-occupier and his family?

POFID.

Answer.

The compulsory purchase order incorporates s. 91 of the Lands Clauses Act, 1845; *see* paras. 7 (1) (*a*) and 8 (3) of sch. 3 to the Housing Act, 1957. There is a right to possession under s. 91 of the Act of 1845 without complying with ss. 84–90 of that Act; *see* para. 9 of sch. 3 to the Act of 1957. Possession may therefore be obtained by the procedure of s. 91, without going into court, subject to any undertaking under s. 42 (3) of the Housing Act, 1957.

3.—Husband and Wife—*Maintenance order—Husband refusing to pay until process issued.*

An order under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1949, was made by my justices upon G, ordering him to pay the weekly sum of £3 in respect of his wife through me as court collecting officer. G never pays under the order unless process is issued against him but always tenders the amount due when the police arrive to execute a warrant upon him, stating that it is easier for him to wait for the money to be "collected" from him rather than to make his payments through me weekly.

Any warrant that is issued under s. 74 of the Magistrates' Courts Act, 1952, has to pass through the hands of two police forces and the extra work caused by G's attitude is quite considerable throughout the year. G is a man whose means enable him to pay the amount quite easily.

Your esteemed advice is sought as to whether there is any method whereby my justices can stop this practice and censure the defendant G.

FALOR.

Answer.

The most effective way of dealing with this not uncommon trouble is to issue a warrant for arrears with the clause "unless the said sum and all costs and charges be sooner paid" excised. *See* the note on p. 147 of *Chislett's "Affiliation Proceedings."*

4.—Land—*Compensation for loss of amenity.*

The council have developed a housing estate behind a row of private houses which had, before the site was purchased by the council, a stone boundary wall at the rear. In the development of the housing estate a road to a battery of six garages was constructed near but not immediately adjacent to the existing stone wall of the row of houses. The stone boundary wall does not form a retaining wall to the roadway.

It is agreed that the construction of the roadway to the garages has reduced the privacy of the occupiers of the private houses and the council have now had a claim from one of the occupiers for a contribution of 50 *per cent.* of the cost of raising this wall to give the same degree of privacy as before. Will you please inform me whether the council are liable for payment of compensation on the grounds of privacy. If so, I shall be glad if you will quote the authority under which such a payment can be made.

PEDAC.

Answer.

The compensation if payable would arise under s. 68 of the Lands Clauses Consolidation Act, 1845, incorporated with the compulsory purchase order, if any, for the purchase of the land for housing. Compensation, however, under s. 68 of the Act of 1845 is only payable in lieu of a right of action which would have lain if the injury had not been caused by the exercise of a statutory power. There would have been no cause of action for loss of amenity in such a case, and there is therefore no right to compensation.

5.—Landlord and Tenant—*Lodger charges—Increase.*

In the offer of a tenancy of a house notice is given in the enclosed form, of the payment in certain circumstances of charges in the above respect. These charges arise from the occupancy of the house and in consideration of the council's grant of permission. The conditions of tenancy make it necessary for the tenant to apply for written permission before taking in a lodger. It is appreciated that a rent cannot be altered unless the tenancy is first determined by a proper notice. A lodger charge takes effect from the time permission is granted by the council, which in some cases involves a retrospective payment. It is, however, not considered to be part of the rent but for a separate consideration although payments of the charge are recorded on the rent card for convenience. I should appreciate your observations on the above and any alternative suggestions you can make in connexion therewith.

POOKLE.

Answer.

In our opinion the increased charges for permission to take lodgers are an increase in the charge for the use and occupation of the premises and are part of the rent. We do not think the charge for lodgers can be increased until there has been a notice to quit and a new tenancy.

6.—Licensing—*Club—Admission of members of other clubs.*

A registered club wishes to provide bar facilities for the benefit of members of other clubs (not being licensed clubs) in the same town. Is it possible for members of other clubs to become associate members of the club and to take advantage of the bar of the club in question either merely by signing the visitors' book or by any other means?

O. ELECTRA.

Answer.

Licensing law imposes no restriction controlling the admission of temporary and honorary members other than requiring that the rules of the club relating to the admission of such members be shown on the return signed by the club secretary and furnished annually to the clerk to the justices: *see* Licensing Act, 1953, s. 143 (2) (*e*) (*i*).

7.—Music, etc., Licence—*Application for—Public right to oppose.*

The owners of a proposed new dance-hall have given notice of intention to apply for a music and dancing licence for their premises. The Public Health Acts Amendment Act, 1890, contains no provision for the giving of public notice, and specifies no grounds of objection. Are the owners of other dance-halls in the vicinity entitled to object, and if so, on what grounds?

O. UTILE.

Answer.

Licensing justices, sitting for the purpose of considering an application for the grant of a music, etc., licence, under s. 51

of the Public Health Acts Amendment Act, 1890, do not sit as a court and the application is not a judicial proceeding (*Royal Aquarium and Summer and Winter Garden Society* v. *Parkinson* (1892) 56 J.P. 404, although, of course, each application must be considered judicially. So far as we know, licensing justices' authority to regulate their own proceedings in respect of hearing persons who appear to oppose the grant of a licence has never been questioned. In our opinion, the words of Lord Herschell in *Boulter* v. *Kent* JJ. (1897) 61 J.P. 532, are apt in relation to any kind of licence which licensing justices have a statutory discretion to grant—"The justices have an absolute discretion to determine in the interest of the public whether a licence ought to be granted, and every member of the public may object to the grant on public grounds, apart from any individual right or interest of his own. The applicant seeks a privilege. A member of the public who objects merely informs the mind of the court to enable it rightly to exercise its discretion whether to grant that privilege or not."

Therefore, we answer the question by saying that it conforms with good practice for licensing justices to inform themselves of the point of view of the owners of other dance-halls in the vicinity without requiring them to specify with any exactness the grounds of their opposition to the application.

8.—Public Health Act, 1936, s. 72—*House refuse—Kitchen waste from institution.*

The council undertake the removal of house refuse within the district. They have now been approached by a hospital situated within the district regarding the collection of kitchen refuse. The kitchen refuse has previously been fed to pigs kept at the hospital, and no collection service has been given. Do you consider that kitchen refuse in these circumstances comes within the meaning of "house refuse." PIGFOOD.

Answer.

Kitchen refuse from the hospital is house refuse, in our opinion: *cf. Westminster Corporation* v. *Gordon Hotels, Ltd.* (1908) 72 J.P. 201.

9.—Public Health Act, 1875, s. 253—*Local authority as person aggrieved where not local authority of district.*

On p. 380 (query 191) in the volume of *Questions and Answers from the Justice of the Peace* (1938–1949) you state "Proceedings for offences against s. 29 of the Act of 1907 (*i.e.*, the Public Health Acts Amendment Act) can only be taken (in the absence of the Attorney-General's consent) by a party aggrieved or by the local authority whose function it is to enforce the section. This conclusion is based on the terms of s. 298 of the Public Health Act, 1936, which replaced the similar (repealed) provisions of s. 253 of the Public Health Act, 1875."

Your attention is called to a contributed article at 122 J.P.N. 232, wherein it is stated, *inter alia*: "It is not however always appreciated that s. 253 of the Public Health Act, 1875, applies also to a number of offences not contained in the Act of 1875. . . . Offences under the Public Health Acts Amendment Act, 1907, . . . will all be subject to s. 253, as all these Acts are required to be construed as one with the Act of 1875. Section 253 lays down that proceedings for the recovery of any penalty under this Act shall not, except as in the Act expressly provided, be had or taken by any person other than by a party aggrieved, or by the local authority of the district in which the offence is committed."

A county road under the jurisdiction of the county council has been excavated by a firm of contractors for the purpose of laying a sewer for a borough council, but that part of the road affected is situate within the area of a rural district council. Consent was not obtained by the contractors for the excavation from the county council, the borough council, or the rural district council and the road was therefore not formally closed under the provisions of s. 47 of the Road Traffic Act, 1930. The county council have now resolved to take proceedings against the contractors under s. 29 of the Public Health Acts Amendment Act, 1907.

May I have your views on the following points:

1. There is an inconsistency between the views expressed in the first and second paragraphs above. If the former is correct the county council would have the power to prosecute by virtue of s. 30 of, and sch. 1 to the Local Government Act, 1929, but if the second paragraph correctly interprets the law it would be the rural district council who had the necessary power. Is this correct, despite the fact that before 1929 the rural district council would not have been able to prosecute, as s. 29 of the Act of 1907 had not been put in force?

2. Section 29 of the Act of 1907 appears to cover several offences. Under the circumstances outlined above can the county council merely allege the excavation of a street without the consent of the county council?

3. Is there any other offence in respect of which proceedings could be instituted? The real offence is closing a highway to the inconvenience of the public, without obtaining an order under the Road Traffic Acts, but this does not appear to be in itself an offence.

PUDEN.

Answer.

Section 253 of the Public Health Act, 1875, applies to proceedings under s. 29 of the Public Health Acts Amendment Act, 1907, which is to be construed with the Act of 1875. The answer cited in your present query was primarily directed to the position of the police, and the reference to the Public Health Act, 1936, was evidently given *per incuriam* in 1938, the error not being picked up in preparing the bound volume. In our opinion, however, the county council are a person aggrieved, in that the excavation will affect their liability to repair or reinstate. The rural district council may also prosecute, notwithstanding that s. 29 had not been put in force in the district before 1929.

1. The offence is excavation of the street without the consent of the county council in writing first obtained.

3. The contractor was acting for the borough council who were executing a statutory power. He had a right to break open the street if he obtained consent, and we do not think absence of consent converts the excavation into a nuisance at common law. There seems, however, to have been an offence under s. 3 (5) and s. 6 (6) of the Public Utilities Street Works Act, 1950.

10.—Road Traffic Act—*Diesel dumpers—Do the Construction and Use Regulations apply to them?*

Having regard to the case of *MacDonald* v. *Carmichael* 1941 (S.C.) J. 21, could you please give your opinion as to whether it is possible, if one of these vehicles is being used on a road, for an offence to be committed under the Construction and Use Regulations. K. LEX.

Answer.

If the decision in the case cited is followed these vehicles are not, while used as was the vehicle in that case, motor vehicles within the meaning of part I of the Road Traffic Act, 1930, because they are not "intended or adapted for use on roads." In such circumstances the Construction and Use Regulations do not apply to them.

It seems to us by no means certain that in every case and in all circumstances the evidence would satisfy the court that such a vehicle was not intended or adapted for use on roads, and the provisions of the said regulations would then certainly have to be considered.

11.—Road Traffic Acts—*Traffic lights—Amber light—Failing to stop—Applicability of s.* 49 *of the Act of* 1930?

Is it an offence to disobey the amber traffic signal (as prescribed by reg. 27 of the Traffic Signs Regulations and General Directions, 1957) when amber is showing alone?

It is agreed that for an offence to be committed contrary to s. 49 of the Road Traffic Act, 1930, the signal must come within the scope of s. 35 (7) (*a*) or (*c*) of the Road Traffic Act, 1956 ((*b*) applies to temporary signs).

In support of the point of view that it is not an offence, it is argued that by virtue of reg. 5 of the regulations, s. 49 of the Road Traffic Act, 1930, applies to the disobeying of the red signal and that as the amber signal is not specifically mentioned, to disobey that sign, is not an offence.

In support of the contrary view it is argued that since the regulations are made under a statute, namely, s. 48 of the Road Traffic Act, 1930, the prohibition conveyed by the amber signal that a vehicle shall not proceed beyond the stop line contained in reg. 30 (1) (*d*) of the regulations, is a statutory prohibition, and therefore the amber signal comes within para. (*a*) of s. 35 (7). KISOR.

Answer.

If the argument in the last paragraph of the question is sound so far as the amber signal is concerned it must apply equally to the red signal because reg. 30 (1) (*a*) contains a prohibition similar to that in s. 30 (1) (*d*). It was considered necessary, however, to provide specially in reg. 5, that s. 49 shall apply to the red signal and we think, therefore, that the aforesaid argument is not sound and that it is not an offence against s. 49 to fail to stop on the amber signal.